IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1958 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUNDA MILK PRODUCERS COOPERATIVE SOCIETY LIMITED

Versus

DISTRICT REGISTRAR

Appearance:

1. Special Civil Application No. 1958 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MS MANISHA LAVKUMAR AGP for Respondent No. 1-2

MR TUSHAR MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/11/2004

ORAL JUDGEMENT

1. The petitioner Society has preferred this petition in order to quash and set aside the order of

interim liquidation, passed by respondent no.1 against the petitioner Society dated 02/02/2002, appointing respondent no.2 as Liquidator of the petitioner Society, at Annexure-A to the petition, and also the order dated 04/02/2002 passed by respondent no.2, at Annexure-B to the petition.

2. The petitioner Society is engaged in the production and distribution of milk. Since last many years, the petitioner Society was getting audit classification in the category of "D", but in the year 2001, the Auditor gave the petitioner Society audit classification in the category of "B", at Annexure-C to the petition. Respondent no.1 issued show cause notice dated 29/12/2001 to the petitioner Society to show cause as to why the Society should not be taken into liquidation on the ground that the petitioner Society was getting audit classification in the category of "D" since last many years.

3. The matter was kept for hearing by respondent no.1 on 31/01/2002. On 02/02/2002, impugned order at Annexure-A to the petition came to be passed, whereby the petitioner Society was directed to be taken into liquidation and respondent no.2 herein was appointed as the Liquidator. On 04/02/2002, respondent no.2, through the Talati-cum-Secretary of the village, directed the petitioner Society not to transact any business and to hand over the charge within three days. The said order is annexed at Annexure-B to the petition.

4. Feeling aggrieved by the aforesaid orders, at Annexures-A and B to the petition, the petitioner Society has preferred this petition before this Court.

5. Mr.B S Patel for the petitioner Society has contended that on receipt of the said show cause notice, the petitioner Society engaged an Advocate, as the matter had been kept by respondent no.1 for hearing on 31/01/2002. On the date of hearing, the petitioner Society made an application for submitting its reply. Mr.Patel has further submitted that respondent no.1, after receiving application for the submission of reply, informed the petitioner Society that the date of hearing would be intimated later on.

6. Mr.Patel has contended that no such intimation was received from respondent no.1 in pursuance of the application for submitting reply, and that, the contentions raised in the application were not considered before the impugned order came to be passed. He has

further contended that subsequently the financial condition of the petitioner Society had also improved as was clear from the audit classification of "B" granted by the Auditor to the petitioner Society. Therefore, the impugned orders ought not to have been passed against the petitioner Society.

7. I have heard learned counsel for the parties. From the documents placed on record, it clearly transpires that the petitioner Society was not heard before the impugned order, at Annexure-A to the petition, was passed by respondent no.1. The order dated 02/02/2002, at Annexure-A to the petition, directing the liquidation of the petitioner Society was passed, without hearing the petitioner Society. Hence, only on this ground, the order of respondent no.1, District Registrar, is required to be quashed and set aside.

8. Mr.Patel for the petitioner Society has relied upon a decision of this Court in the case of Apexa Co-operative Bank Ltd. v. District Registrar & ors. reported in 1993 (2) G.L.H. 861, and more particularly, on Para 87 of the said decision. It reads as under;

> "87. Before parting with the case, we would like to draw the attention of the State Government to the desirability of investing the power of liquidation in an officer not lower in rank than the Joint Registrar of Co-operative Societies who has the necessary experience, equipment and expertise to deal with such matters. We need not repeat again what we have stated earlier with regard to the content and extent of the power of winding up and the serious consequences which follow upon liquidation. The law relating to cooperative societies has provided for winding up as a last measure and not as the final resort. There are enough checks and balances and the attempt of the authorities should be to inject healthy life into the body-fabric of a sick society rather than bring about its speedy end. In order to achieve this object, it would be desirable to invest the power in a high official who can be trusted to exercise it reasonably, honestly and bona fide, having regard to all the relevant circumstances of the case and bearing in mind the policy and object of the statute. We hope and trust that the view expressed by us would be considered at an appropriate level and action taken soon to implement the same."

9. In above view of the matter, the order dated 02/02/2002, at Annexure-A to the petition, and also the order dated 04/02/2002, at Annexure-B to the petition, are quashed and set aside. The matter is ordered to be remanded back for decision in the matter afresh. The District Registrar, respondent no.1 herein, is directed to pass a fresh order in the matter, after taking into consideration all the contentions raised by the learned advocate for the petitioner, and more particularly, the contention that the financial condition of the petitioner Society had improved substantially. While passing an order afresh, the District Registrar shall consider the guidelines issued by this Court in Apexa Co-operative Bank Ltd. v. District Registrar and ors case (supra).

10. With the above directions, the petition stands partly allowed. Rule is made absolute to the aforesaid extent.

(K. S. Jhaveri, J.)

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